

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER No. 391 of 2004

Shaligram Shankar Bandale .. Appellant

versus

Vasantrao Chandusheth Kalbhor .. Respondent

...

Mr.G.S. Godbole for the appellants.

Mr.V.D. Borwankar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 5th October 2006

P.C.:

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 25th February 2003 passed by the 3rd Joint Civil Judge, Senior Division, Pune conditionally allowing the appellants application under Order 9 Rule 13 of the Code of Civil Procedure. Learned counsel for the respondent raises a preliminary objection to the

maintainability of the appeal and submits that under clause (d) of Order 43 Rule 1 of the Code of Civil Procedure an appeal lies only against an order rejecting an application under Order 9 Rule 13 of the Code of Civil Procedure. He submits that an order allowing an application under Order 9 Rule 13 of the Code of Civil Procedure, whether conditionally or unconditionally, is not appealable.

3. In view of this preliminary objection, learned counsel for the appellant seeks leave to withdraw the appeal with liberty to challenge the impugned order in appropriate forum in appropriate proceedings. Leave granted. Appeal is disposed of as withdrawn.

4. At the request of the learned counsel for the appellant, interim order passed in Civil Application is continued for a period of four weeks.

(D.G. KARNIK, J)